

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

March 8, 2012

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Owens, Chair; Mike Cravens, Frank Penn, Carla Blanton, William Wilson, Will Berkley (departed at 5:22 PM), Marie Copeland (departed at 5:15 PM), Lynn Roche-Phillips. Eunice Beatty and Patrick Brewer were absent.

Planning Staff Present – Chris King, Director; Bill Sallee, Tom Martin, Cheryl Gallt, Jimmy Emmons; Dave Jarman and Denice Bullock. Other staff members in attendance were: Dr. Derek Paulsen, Commissioner of the Department of Planning, Preservation & Development; Hillard Newman, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Tim Queary, Division of Environmental Policy; Captain Charles Bowen, Division of Fire and Emergency Services; and Charles Martin, Director of the Division of Water Quality, Greg Lubeck and Susan Plueger, also of the Division of Water Quality and Jessica Gies, Aide to Council Member Bill Farmer.

- II. **APPROVAL OF MINUTES** – The Chair noted that there were no prior Planning Commission meeting minutes to be considered at this time.

- III. **POSTPONEMENTS OR WITHDRAWALS** – The Chair asked if anyone on the Commission or in the audience wished to request postponement or withdrawal of an item.

- a. DP 2011-96: CHINOE VILLAGE SHOPPING CENTER (AMD) (2/9/12)* - located at 1050 Chinoe Road.
(Council District 5) **(The Roberts Group)**

Request for Postponements - Council Member Bill Farmer, 5th District, began by thanking the Planning Commission for their service to the community, as well as for their services on the Planning Commission. He said that he was present on behalf of the Chinoe residents, and requested postponement of DP 2011-96 until such time that a full Planning Commission is present to make a consideration. He then said that at the December meeting, the Planning Commission recommendation to postpone this request created a voting oddity that put it off to a later meeting on behalf of the Kroger community. Council Member Farmer asked that the Planning Commission now grant a postponement on behalf of the Chinoe residents. He said that the residents are requesting full representation of the Planning Commission to allow those members to make comments, as well as a recommendation.

Planning Commission Comments – The Chair said that this request had been postponed for 2 months and asked the reason behind the postponement request. Council Member Farmer said that not all of the Planning Commission members are present to hear this case today; and since this request was heard by the Commission, one of the Planning Commission members has become the Commissioner of the Department of Planning, Preservation & Development. Given the even nature of this body, the neighbors would like to make sure they receive full representation by the Commission. He said that the neighbors are requesting postponement of this request until such time the Mayor can appoint a new Planning Commission member so that this case can be heard in its entirety.

Representation – Rena Wiseman, attorney, was present representing the applicant. She said that she respectfully disagreed with the postponement request made by Council Member Farmer. She then said that she understands that it's not always possible to have a full Commission present and this request had been postponed for two months. She noted that her clients were present and prepared to move forward on this request. Ms. Wiseman said that no one has any knowledge of when a new Planning Commission will be appointed, and ideally all Commission members would be present; but sometimes that is not possible. She requested that this case be heard by the Commission at today's meeting.

Planning Commission Comments – Ms. Blanton said that if this item were to be postponed again, there is no guarantee as to how many Commission members would be present at the next meeting. She then said that other issues have been considered with less members present. By doing this, it could set a precedent for an item to be only considered with a full Commission.

Mr. Penn asked for legal guidance. Ms. Boland said that the Commission has a statutory period in which an item must be considered, unless the applicant agrees to a postponement request. She then said that the Commission will need to make a recommendation on this item at today's meeting.

The Chair said that the Planning Commission has a deadline in which this request needs to be considered; and with the applicant expressing their objections to the postponement request, this item would be presented today.

* - Denotes date by which Commission must either approve or disapprove plan.

- b. DP 2012-7: TATTERSALLS APARTMENT DEVELOPMENT (HALLMARK STUDENT DEVELOPMENT) (4/2/12)* - located at 843 South Broadway and 1200 Red Mile Road (a portion of). (Council District 11) **(Vision Engineering)**

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting that DP 2012-7 be postponed one month to the Commission's April meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 8-0 (Beatty and Brewer were absent) to postpone DP 2012-7 to the April 12, 2012, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, March 1, 2012, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Eunice Beatty, Mike Owens, Will Berkley and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Jimmy Emmons, Traci Wade, Barbara Rackers, Kenzie Gleason and Dave Jarman, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

A. CONSENT AGENDA - NO DISCUSSION ITEMS – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria:

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

Requests can be made to remove items from the Consent Agenda:

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. DP 2012-1: LOCHMERE ESTATES (MAPLE RIDGE) (AMD) (3/20/12)* - located at 651 Chilesburg Road. **(Eagle Engineering)**
(Council District 7)

Note: The Planning Commission postponed this item from their February 9, 2012, meeting. This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to reconfigure the lots (adding several) and to alter the public access easement.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Provided the Planning Commission makes a finding that the plan complies with the provisions of the EAMP.
10. Resolve tree protection areas to the approval of the Urban Forester.
11. Resolve driveway impact on open space, or denote that all driveways will be limited to a maximum of 9' between curb and lots in site statistics.

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2. DP 2012-10: ROGERS & CLARK ADDITION, (LOTS 21, 22, 23 & 24) (LEX. HEARING & SPEECH CENTER) (4/28/12)* - located at 154 – 162 North Ashland Avenue. (Council District 3) **(Mark McCain)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.

3. DP 2012-12: FOUNTAIN PLAZA, UNIT 2 (EAGLE CREEK OFFICE PARK) (LOTS 15 & 17) (AMD. #2) (4/28/12)* - located at 211 and 245 Fountain Court. (Council District 7) **(Midwest Engineering, Inc.)**

Note: The purpose of this amendment is to reconfigure parking and buildable areas on Lots 15 & 17 due to the additional building square footage on Lot 15.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. Dimension sidewalks.
11. Release of easement conflict prior to certification.
12. Correct floodplain reference.

4. DP 2011-95: NEWTOWN SPRINGS (TRILOGY LEXINGTON HEALTH CAMPUS #3) (5/22/12)* - located at 564 Asbury Lane (a portion of). (Council District 1) **(Strand Associates)**

Note: This plan was approved by the Planning Commission at its December 8, 2011, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote significant trees, if any, on the site.

Note: The applicant has requested a continued discussion of this plan in order to add 1,182 square feet of floor area.

The Subdivision Committee Recommended: **Approval**, subject to the previous conditions.

In conclusion, Mr. Sallee said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission or the audience to permit further discussion. He noted that the staff had received the required affidavit for the posting of a sign for DP 2012-1: LOCHMERE ESTATES. Mr. Martin added that it was in order.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda.

Action - A motion was made by Mr. Wilson, seconded by Mr. Cravens and carried 8-0 (Beatty and Brewer absent) to approve the items listed on the Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

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The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

Note: Mr. Owens reminded everyone present at the meeting that DP 2011-96 is a continuation from the December, 2010 meeting, and respectfully requested that the testimony given reflects new information on this proposal.

1. CONTINUATION OF DEVELOPMENT PLAN

- a. DP 2011-96: CHINOE VILLAGE SHOPPING CENTER (AMD) (2/9/12)* - located at 1050 Chinoe Road.
(Council District 5) **(The Roberts Group)**

Note: The Planning Commission continued this item from their December 8, 2011 and February 9, 2012, meetings. The purpose of this amendment is to revise the layout of the gas station.

The Subdivision Committee Recommended: **Referral to the full Commission.**

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote: The existing landscaping and trees along Creekwood Drive shall be retained.
9. Discuss height of proposed canopy.
10. Discuss lighting restrictions related to off hours.
11. Discuss traffic movement, need for drive aisles and canopy setback to the approval of Traffic Engineering.
12. Addition of original ZDP restrictions from DP 83-151.

Development Plan Presentation – Mr. Martin directed the Commission's attention to the Development Plan for Chinoe Village Shopping Center, which is located at 1050 Chinoe Road. He noted that at the December, 2010 meeting, the Commission granted a continuance of this plan to today's meeting.

Mr. Martin stated that since the December meeting, the applicant had submitted a revised development plan to the staff. He directed the Commission's attention to the rendering of the revised plan and briefly reoriented them to the general vicinity, as well as to the surrounding street system. He said that the applicant had proposed to build a 108 square-foot kiosk with a restroom, as well as a canopy that will cover 5 fueling stations, with a total of 10 gas pumps proposed. With the revised submittal, the applicant had submitted a list of items that they are prepared to address, noting that the staff had previously distributed that list to the Commission. He said that the primary physical change is along Creekwood Drive. The applicant is proposing to widen the proposed landscape buffer area; in conjunction with that change, the drive aisle has become more restrictive. He then said that the retaining wall in this area will be raised and the height of the canopy will be lowered 1 foot.

Mr. Martin said that the staff had recommended approval of this request to the Subdivision Committee; and, in turn, the Subdivision Committee had recommended referral of this plan to the Commission. He directed the Commission's attention to the distributed list of conditions, and briefly explained that conditions #1 through #7 are standard sign-off requirement from the different divisions of the LFUCG. He said that condition #9 related to the proposed canopy; and, as previously stated, the applicant has lowered the height of the canopy to the State's minimum requirements, which is 1 foot lower than what was previously proposed. He said that the applicant had also submitted a lighting schematic to the staff and they will be presenting that information today to the Commission. He then said that the concern about traffic movements and drive aisles have been addressed through calming devices, as well as the realignment of the central parking lot intersection. Mr. Martin said that condition #12 referenced the type of building material and landscape screening that was previously imposed on this development. Those items had dropped off the amended development plan, and condition #12 will require those items to be added back.

Since the December meeting, Mr. Martin said that the staff had received several new communications from the residents that were previously distributed to the Commission. He noted that the majority of those communications are in opposition, but the staff did receive one letter of support. He noted that a traffic study was prepared and its related information had been distributed to the Commission for their review.

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In conclusion, Mr. Martin said that the applicant is proposing to reduce the height of the canopy by 1 foot and increase the retaining wall and landscaping buffer area. He concluded by reporting that the applicant is still proposing to build a 108 square-foot kiosk with a restroom, as well as a canopy that will cover 5 fueling stations, with a total of 10 gas pumps proposed.

Commission Questions – Ms. Blanton asked, with the increase height of the retaining wall and the landscape buffer, if there is sufficient visual area to see pedestrians on the sidewalk and along the street. Mr. Martin replied affirmatively, and said that the landscape buffer area had moved toward the interior of the development.

Ms. Copeland asked how many parking spaces would be lost with this proposal. Mr. Martin said that in the B-6P zone, the parking requirements are based upon the parking floor area and not the number of parking spaces. He then said that the applicant could address that question, but he believed it was about 20 total spaces.

Representation – Ms. Wiseman thanked the Commission for allowing additional information to be presented on this proposal. She said that Diane Zimmerman was present and she would give a brief summary on the Traffic Impact Study and Bob Cornett with The Roberts Group, would explain the proposed changes to this development plan.

Ms. Wiseman said that the Commission should keep in mind that this is an amendment to a development plan. She then said that, at the December meeting, there was discussion as to how a use that is permitted in this zone could not be allowed. There is a provision in the Zoning Ordinance stating that the Commission could deny an amendment to a development plan; but that provision lists a very defined situations, such as potential traffic, drainage, or topographic problems. She then said that this is a power that the Commission has rarely used because they are being asked to deny a use that is otherwise permitted. She said that it is not a question of whether or not this use is appropriate or compatible, or whether or not the Commission believed it to be a good idea or bad idea. The issue with this amended plan is whether or not this proposal meets the Zoning Ordinance and the requirements of the Land Subdivision Regulations.

Ms. Wiseman said that the next issue is whether or not, by adding this fuel center, it will create a problem or a negative impact on the neighborhood shopping center or the surrounding area. She then said that what they are producing today, in terms of traffic and lighting, will demonstrate that any time something is changed, there will be an effect; but it is minimal and can not be construed, if looked at objectively, as a problem. Ms. Wiseman said that this request is not a zone change and is not a conditional use, but rather a question of whether this request causes some sort of problem. She then said that if the Commission begins to review a development plan as to whether or not it is appropriate, their hearings will become much longer. The plan amendment process was intended to make sure that the use, with the requirements of the Zoning Ordinance, has no drastic changes from what was originally approved and what is being presented.

Ms. Wiseman said that placing a fuel center in a neighborhood shopping center is not an unusual or an atypical use in this community. She then said that fuel centers are in neighborhood shopping center and they are located throughout the community. She noted that the Beaumont Shopping Center has a fuel center and is across from single family homes. There is a similar fuel center in the Hartland Shopping Center, which is surrounded by duplexes, townhomes and single family homes. She said that for many years there was a fuel center on Romany Road, which was the "ideal" shopping center. She then said that the Expansion Area Master Plan also calls for fuel centers and automobile service stations to be in the Community Center (CC) zone, which is specifically designed to serve the needs of the surrounding neighborhoods. She noted that it was anticipated that the shopping centers will have these types of uses.

In conclusion, Ms. Wiseman said that they believe the information that will be provided pertaining to the traffic study, the lighting and the screening will indicate that the gas station would not create a problem for this area. She then said that they fail to see how the Commission can conclude that this location will create a problem, especially when the Commission did not feel it would be a problem at the Beaumont Shopping Center, the Hartland Shopping Center, the Gardenseside Shopping Center on Alexandria Drive or anywhere else in Lexington. She said that this is not about whether or not the Commission agrees or disagrees with a request, but rather if that use will cause a problem for the area. She then said that Diane Zimmerman will present a brief explanation on the traffic study for this area, as well as explain the results on the morning and afternoon peak hour.

Traffic Impact Study - Ms. Zimmerman gave a brief explanation of her background and work experience in the transportation planning field. Directing the Commission's attention to the Traffic Impact Study, she said that the data was collected on May 12, 2012, and they discovered that the AM peak hours are 7:15 to 8:15 AM and the PM peak hours are from 5:00 to 6:00 PM. She then said that the proposed fuel center would generate 139 PM peak hour trips and 81 of those trips would be new traffic. The trips assigned to Chinoe Road approaching from the south were 70 percent, and from the north were 30 percent. She then directed the Commission's attention to the Table on Page 4, and noted that there is also a component for a fuel center that relates to pass-by trips, and that data gathered shows the percentage of entering and exiting vehicles. Ms. Zimmerman directed the Commission's attention to Page 7, Table 2, and explained the "Level of Service" for the proposed development, noting that this information was determined by using the procedures detailed in the Highway Capacity Manual. She said that for

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this area the level of service does not warrant a traffic signal; but other traffic control methods could be used, such as marking the turn lanes into the shopping center for both Creekwood Drive and Chinoe Road.

Ms. Wiseman asked for clarification to the level of service for the entrances into the shopping center. Ms. Zimmerman said that Chinoe Road for the AM hours is currently at a level of service "C" and it will continue to operate at this level of service. She then said that for the PM hours on Chinoe Road, it is currently at a level of service "D" and it will continue to operate at this level. As for Creekwood Drive, the AM hours currently have a level of service "C" and it will continue to operate at this level of service; and the PM hours for Creekwood Drive are currently at a level of service "D" and it will drop down to a level of service "E."

Ms. Wiseman said that the Traffic Impact Study shows that this development would not create a problem. The level of service for this area will maintain itself with the exception of the PM hours on Creekwood Drive. She said that there is a choice when considering a development plan; and under limited circumstances, the request can be denied. Conditions can be imposed to mitigate those problems, which is the appropriate action the Commission should take. Ms. Wiseman said that the increase in traffic is minimal for the north and southbound traffic.

Ms. Wiseman said that, at the December meeting, there was much discussion related to the Kroger shoppers, who may or may not use the fuel station on the same day of their grocery shopping. She then said that the traffic impact study does not account for those shoppers. Based upon Kroger's experience, they know there is a segment of customers who will use the fuel center on the same day they use the store. She said that these customers are not considered a "new trip." She then said that there is no formula for this type of trip; therefore, it is not calculated in the manuals. Ms. Wiseman said that the study had shown that the proposed fuel center would generate 81 new trips, but the study does not show how many of those new trips would be using Kroger for their shopping. Ms. Zimmerman concurred, and said that this is the 5th Kroger fuel center that she has been hired as consultant; and the data shows that as low as 30 percent of fuel shoppers also shop at the Kroger store on the same day. She then said that the unknown factor was whether or not that person was already coming to shop at Kroger and decided to use the fuel center, or if that person was using the fuel center and decided to shop at the store. Rather than assuming that information, they provide the worst case analysis and report the data as "new" trips. She said that according to the data provided by Kroger, a dual purpose trip can range between 30 and 70 percent.

Planning Commission Questions – Ms. Roche-Phillips asked if the greatest traffic would be traveling from Chinoe Road to Creekwood Drive or from Creekwood Drive to Chinoe Road. Ms. Zimmerman said that the greatest traffic would be from the stop sign on Creekwood Drive turning left onto Chinoe Road. Ms. Roche-Phillips then asked if this create an AM and PM problem. Ms. Zimmerman said that the level of service for the AM hours would remain at a level of service "C," but for the PM hours, the level of service would drop to a level of service "E."

Development Plan Presentation – Bob Cornett, The Roberts Group, was also present on behalf of the applicant. He said that the staff had covered most of the changes that they were proposing, and the Traffic Impact Study was prepared, as requested.

Mr. Cornett said that, at the December meeting, Ms. Copeland inquired about the type of lights that are used at the Beaumont Shopping Center. That center is using fixture with wattages between 9,600 and 10,400 underneath the canopy. He then said that the Chinoe Kroger store had decided to use LED light fixtures, instead of the metal halide fixtures, which would result in a reduction in the light levels. Also by lowering the height of the canopy by 1 foot, the angle of the light projection is also considerably less. Directing the Commission's attention to the rendering, he said that the retaining wall between Creekwood Drive and the canopy will be raised 3½ feet to help mitigate the sound and headlights coming from the fuel center. He then said that the wall would be moved 5 feet closer toward the center, and additional shrubs would be planted next to the existing shrubs. The excavation is outside of the tree line and they are confident that the existing trees will survive. Mr. Cornett said that the elevations of the houses are above Creekwood Drive and the height difference between the sidewalk and the canopy roof line is about 10 feet. He said that they believe the redesign is a big improvement for this development.

Mr. Cornett said that in the center of the canopy there is a light pole with three full-size heads on it. They are proposing to remove that pole completely and not relocate it, which will remove the light spillage onto the roadway and sidewalk. He then said that since the December meeting, they revised the layout of the center by removing the diesel tank at the rear. This decreases the concerns of larger trucks using this fuel center for refueling.

Mr. Cornett said that the hours of operation were originally proposed from 6 AM to 11 PM; and since the last meeting, those hours have been reduced by one hour, making hours of operation from 7 AM to 11 PM.

Mr. Cornett then said that they have reviewed the proposed and existing LFUCG Noise Ordinance; and since the proposed ordinance has not been acted upon by the Council, Kroger is agreeable to complying with the current Noise Ordinance. Should the proposed Noise Ordinance be approved by the Council, the speaker volumes are adjustable and can be lowered if needed. This will allow Kroger to stay in compliance with those restrictions.

Mr. Cornett said that one of the development plan notes pertained to the architectural upgrades, and they will be using brick for the columns of the canopy, as well as on the kiosk.

In conclusion, Mr. Cornett said that they believe they have addressed the concerns from the December meeting.

Planning Commission Questions – Ms. Copeland asked what type of material will be on the wall facing the townhouses, and why the wall would be covered by the shrubs. Mr. Cornett said that additional landscaping was proposed due to the concern of visibility, and at this time the type of material is not known.

Ms. Copeland agreed that LED lighting provides lower wattage with the same amount of illumination, but the issue is footcandles. Mr. Cornett said that Kroger has decreased the number of footcandles from 400-watt metal halide fixtures to 250-watt LED light fixtures. Ms. Copeland asked if there is an existing fuel center with this type of lighting that is being proposed. Mr. Cornett said that he did not believe so, but there is a gas station at the corner of Palomar Center and Man O' War Boulevard that is similar to this proposal.

Ms. Copeland asked, if the center pole is removed, if this will cause a dark spot in the parking lot. Mr. Cornett said that there will be two security lights on each side of the kiosk that remains on after hours. He then said that their proposal will have a 65 percent reduction of the light level, as compared to other fuel stations.

Ms. Copeland said that the bottom of the canopy will be lowered 1 foot, and asked what about the top of the canopy. Mr. Cornett said that the entire canopy was lowered 1 foot. Ms. Copeland then asked how tall the billboard section is, to which Mr. Cornett replied that it was 3'6."

Mr. Penn noted his understanding that diesel will not be sold at this location, although there will be semi trucks hauling the fuel into the center. He asked how those trucks will enter and exit the shopping center. Mr. Cornett said that the trucks would enter the shopping center from Chinoe Road and would position themselves to unload the fuel with the passenger side facing inward. He then said that once the fuel is unloaded, the trucks would proceed toward the Kroger building and exit onto Creekwood Drive at the rear. Mr. Penn said that the trucks will need to make a right onto Creekwood Drive, which Mr. Cornett confirmed. Mr. Penn then asked if Creekwood Drive is wide enough to accommodate the trucks. Mr. Cornett said that Creekwood Drive is a collector street that was intended to connect to the area across the creek. He then said that due to the elevation of the area, that connection was never completed and Creekwood Drive was terminated. He noted that this street is wide enough to accommodate larger trucks. Mr. Penn asked if it would be safer to exit or enter the shopping center from Chinoe Road. Mr. Cornett said that it would be safer to exit onto Creekwood Drive since there is less traffic impact and less pedestrian traffic.

Since Kroger will agree to comply with the current LFUCG Noise Ordinance and they will adjust the speaker volume. Mr. Wilson asked if the speakers will be adjusted lower than what is required by the Noise Ordinance. Mr. Cornett said that the speaker volume is set to sound like a normal conversation, which is between 55 and 65 decibels. He then said that the speaker volume can be adjusted accordingly to comply with the Noise Ordinance. If the speaker volume exceeds a level that is not acceptable, it can be adjusted down. Mr. Wilson asked if the applicant is saying that the volume can be adjusted or it will be adjusted. Mr. Cornett said that it will be adjusted.

Mr. Berkley asked if the grocery delivery trucks use the main entrance of the shopping center. Mr. Cornett replied affirmatively. Mr. Berkley said that using the entrance on Chinoe Road may create a potential problem, and considering that Creekwood Drive crests Chinoe Road, it would seem that Creekwood Drive would be the better route for the trucks. Mr. Cornett said that they did not review turn movements for this request, but they could make some minor modification that would allow the truck movements through the street. However, this scenario would cause the driver to be on the wrong side of the tanks. Ms. Wiseman said that there is a Kroger store in this shopping center, and they receive deliveries via tractor trailer trucks at least once a day. Mr. Berkley asked if those trucks are using the Chinoe Road or Creekwood Drive entrance. Ms. Wiseman said that these trucks can either use the entrance off of Chinoe Road or Creekwood Drive. She then said that the loading dock is located to the rear of the property. Mr. Berkley said that this is why he believed those trucks are using Creekwood Drive. Ms. Wiseman said that, regardless, there are tractor trailer trucks coming into that property daily.

Audience Comment – The Chair asked if anyone in the audience wished to speak in support to this request. There was no response.

The Chair asked if anyone in the audience wished to speak in opposition of this request. Antonio Poug, 3512 Creekwood Drive, was present. He said that he has resided in this area for 15 years, and previously submitted letters of opposition to the Planning Commission. He then said that this proposal is very different from other Kroger fuel centers in the urban areas. This is a high density, residentially developed area and there are 20 houses within 150 feet of the pumps. He said that the Beaumont Shopping Center is 250 feet from the residential area and the Hartland Shopping Center is 170 feet from the residential area. He then said that based upon the health hazards, this should not be allowed. The regulations for gas stations cite that the distance should be 60 feet from a residential area. According to the research, if there are 10 pumps, a residential area should not be within 300 feet,

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due to the fumes. Mr. Pouga said that the neighborhood was not contacted by Kroger at any point throughout this process, and none of the neighbors want this fuel center, knowing the health hazards. This is the difference between this proposal and the other Kroger fuel centers, as noted by the petitioner. Mr. Pouga stated that this request should not be allowed.

Bill Willson, 1065 Chinoe Road, was present. He directed the Commission's attention to the rendering, and indicated the houses near the proposed fuel center. He said that Kroger had tried to say that this fuel center is in a vacuum and not near a residential area. However, as shown on the rendering, there are houses very near the proposed fuel station. Mr. Willson said that it is his understanding that the Planning Commission could deny this request, if this proposal creates problems with traffic or health, or if it creates an insurmountable nuisance. He then said that it is apparent that all of these conditions exist on this proposal. The Commission will hear evidence that disputes the previous testimony given by Kroger's representatives, with regard to the traffic study, the benzene hazard and the insurmountable nuisance this request will cause on this area in the way of noise and lighting.

Jennie Willson, 1065 Chinoe Road, was present, and noted that her family has lived in this area for 12 years. She said that the Chinoe Road area is a beautiful area and she is proud to call it her street. She then said that since the December meeting, she had found information relevant to this case that is very disturbing. Ms. Willson said that she does not want a fuel center outside her front door and there is a concern with the decreasing property values, crime, traffic and many others; but the most troubling is the health hazards from living near a fuel center. She then said that, in researching the information, living near a fuel center can have a negative health effect on the nervous system and reproductive health, as well as blood related cancers from the carcinogens in the chemical known as benzene, which is used in gasoline. The Center for Disease Control indicated that the air around hazardous waste sites or gas stations contains higher levels of benzene than any other areas. She said that the American Cancer Society had cited that the sources of benzene in the environment include gas stations and areas with heavy traffic. She then said that living in areas with benzene increases the risk of short-term and long-term negative health effects.

Ms. Willson said that she had spoken with the national hotline for the CDC, and they indicated that benzene is a major component of gasoline, and increased levels of this chemical are generally found at fueling stations. She then said that families living or playing near gas stations have increased exposure to benzene. It is not logical for a city that has made a stand against smoking to consider having a gas station this close to homes. She said that the Planning Commission should consider the information provided by the government agencies, and disapprove this proposal. She then said that, even though this area is zoned for this use, it is not appropriate for families; and the LFUCG should consider updating the Zoning Ordinance to reflect the current information. The residents of this area are trusting the Commission to make the right decision by denying this request.

Ms. Willson said that the Division of Planning mission statement reads: *To provide a vision and strategy that will allow Lexington to grow and prosper while preserving, protecting, and enhancing existing neighborhoods, downtown, and the rural Bluegrass cultural landscape.* She then said that the Commission would not like to see a 10-pump gas station this close to their homes. She noted that the different government agencies believed that there is an association with health problems and living near a gas station. She requested that the , should the Commission decide to approve this request, that Kroger postpone their construction for one year in order for them to sell their homes and move out of the area.

Lana Thomas, 1063 Chinoe Road, was present. She said that it was previously mentioned that this fuel center is a convenience for the neighborhood; however, there are several gas stations within a mile from this shopping center. She noted the locations of the surrounding gas stations, as well as their distance from the Chinoe Shopping Center.

Bruce Thomas, 1063 Chinoe Road, was present. He said that he had contacted the LFUCG Police Department and, according to their analysis, there were 578 robberies in Lexington in the past 6 months. He then said that out of that number there were 24 gas station robberies, not including convenience stores, during this time. He indicated that gas pumps bringing crime is a problem. Mr. Thomas said that he lives in an area that had very little crime and, when considering that 10 percent of the crimes in Lexington are robberies of gas stations, this concerns him. He asked the Commission to look at the Council Chambers and imagine that a gas station is just outside the doors of the Chamber. Using a flash light to illustrate his point, he said that Kroger had indicated that lowering the light would make a difference. He said that it sounds great, but lowering a light 12 inches will not make a huge difference if you live directly across the street. Mr. Thomas said that making a little difference in the site doesn't change the fact that it is a gas station. He then said that, according to the applicant, the fuel center will not increase traffic, so if it does not benefit Kroger, then why build it. He noted that he had not read the Traffic Impact Study, but he has lived in this area and the traffic will increase, becoming more dangerous. Once this is built it can't be undone. Mr. Thomas said that the Commission would not want their kids or grandchildren playing across from a gas station, and he hopes that the Commission will not vote in favor of this request.

Jim Fields, 1029 Chinoe Road, was present. He noted that he had purchased his home 3 years ago, and said that this area is considered a "recreation route" – every day there is pedestrian activity such as walkers, runners and

cyclists. He then said that increasing the traffic will endanger the lives of these pedestrians. At the December meeting, it was indicated that the traffic on Chinoe Road would increase by 10 percent, which does not correspond to their traffic impact study. If Kroger is allowed to build this fuel center, the character of the area will change, as well as the quality of life. He said that for the residents of the area, this is not an impact but it is a problem. He presented two photographs to the Commission, and said that these pictures were taken at 6 PM during a promotional sale on Senior Citizen Day. He then said that the parking in this shopping center was full; and if 32 parking spaces were eliminated for the proposed fuel center, it would be even worse. It seems to be counter productive for Kroger to lose parking spaces when the parking lot is full on these days. He said that this proposal will increase the traffic and cause more congestion in and out of the shopping center. He then said that Kroger has its own self interest at heart, and they have not communicated with the neighborhood, even though they said they had. The neighborhood is expressing their concern with this proposal and asked the Commission if they would want this to be in front of their home, or to watch property values decrease. He requested that the Commission deny this request.

Clarissa Spawn, 1909 Bellefonte Drive, was present, noting that she has lived in Council District 5 for 20 years. She said that she and her husband have bicycled in this area for 15 years. She then said that the Traffic Impact Study did not mention what would happen to these bicyclists. She said that a double diamond intersection is proposed for the Bates Creek Road/New Circle Road intersection, and Chinoe Road is one of the few ways to get out of town. Ms. Spawn said that when comparing the other Kroger stores in Lexington, the Chinoe Shopping Center is not the same. She then said that with the increasing hazard of the traffic and the potential health hazard, it pales in comparison. This would not increase the "net gain" for the city; and in fact, it would result in an additional infrastructure cost. She said that there will be an increase in tanker trucks on Alumni Drive and Chinoe Road, as well as the nearby street system. Ms. Spawn said that the Kroger Corporation did not make this proposal based upon the neighborhood's concern; they made this decision because it is an important part of their business plan. She then said that this fuel center would add 10 percent to their corporate revenue. She noted that other states have opposed Kroger fuel centers, and their request was rejected. She asked the Planning Commission to deny this request.

Linda Faulkner, 1031 Chinoe Road, was present. She said that she shops at this Kroger store, and most of the people in the audience also shop at this store. She then said that this store is small and the employees are friendly, but there hasn't been a time when she left this store thinking that she needed gas and wished Kroger had a gas station. She noted that, as she commutes around Lexington, she can find Kroger fuel centers, not to mention the other gas stations within the 2-mile radius of the shopping center. Ms. Faulkner said that she loves this area and she loves Lexington. She then said that she loves the fact that a person can travel a winding road a few miles out of Lexington to see horse farms, or the old aristocratic houses with the beautiful landscaping. Ms. Faulkner said that she understands part of the Commission's responsibility is to uphold the regulations, but part of the Commission's responsibility is to protect the parts of Lexington that the citizens love so much. She requested that the Commission protect this neighborhood and deny this request.

Mike Stratton, 3349 Pepperhill Road, was present. He said that he has lived in Lexington for 25 years, and he agreed with Ms. Faulkner's comments. He then said that this Kroger store is somewhat small and is convenient, but this proposal needs to be separated from the neighborhood. The idea of having a service station in the middle of a neighborhood is wrong, and common sense needs to be used when such making judgments. He asked the Commission to place themselves in the residents shoes and asked if they would want this use near their house or their kids. He requested that the Commission deny this request.

Council Member Bill Farmer, 5th District, was present. He said that it is an honor to serve the residents of this area and the members of the 5th District. He then said that Kroger is a large corporate citizen, and they are in a very tough business where incremental profit is the difference in making it or not. He then said that the Romany Road commercial area did have a gas station, but there were only a couple of pumps. The intrusion on this neighborhood with the proposed fuel center, the large canopy, and the number of pumps provides a much higher cost to the residents of this area than it would on the Kroger corporate citizen. He said that the citizens in this area will live with this decision each and every day, if the Commission grants this proposal. He then said that the delivery trucks are much different than the tanker trucks entering this property. He said that the other Kroger store has multiple exits, and to allow a large flammable tanker come down to a dead end street should not be permitted. Council Member Farmer said that the numbers on paper are much different than actually watching a line of traffic trying to enter Creekwood Drive or watching the incoming traffic coming over the hill at the same time a tanker truck is exiting Creekwood Drive. He then said that this proposal creates more than one type of hazard, which the Commission can use to disapprove this request. The Commission sits in seats of decision and they have the opportunity to make those decisions on behalf of the Lexington citizens. He said that all of the conversations and letters received have been negative, except for one supporter. He then said that they are not trying to draw a bad beat on Kroger, but this is changing the character of a neighborhood in a way that it's a disservice to the area, while Kroger profits. He asked that the Commission serve the citizens of the 5th District and this neighborhood by denying this request, because once the decision is made to allow this use, it can not be changed.

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Petitioner's Rebuttal – Ms. Wiseman said that Joe Hamilton, Kroger's engineer, was present, should the Commission wish to speak to him on the issues of safety and the fuel storage tanks. She then said that Kroger will install a "Stage 1 Vapor Recovery System," which is designed to capture the vapors during the unloading of the fuel. She also said that there will be an enhanced vapor recovery system installed for the underground storage tanks, which will efficiently recover the lost vapors. Ms. Wiseman said that they are not putting anything that in their assessment is dangerous. She said that this proposal will meet all requirements of the local, state and federal regulations, as they exist today. She said that those will continually improve and change and they sincerely believe that with the current technology, the standards will be met.

Ms. Wiseman said that there had been a lot of discussion about the traffic concerns in this area, and they have provided the Traffic Impact Study, as requested by the Commission. She then said that Ms. Zimmerman's firm had gathered the data through traffic counts and it was reviewed by the LFUCG Division of Traffic Engineering, who is in agreement that this proposal will have a minimal impact on this area. She then said that Chinoe Road, which is a 70-foot-wide collector street; and Creekwood Drive, which is a 60-foot-wide collector street, can handle the minimal increase in traffic. There have been recommendations to have striping on Creekwood Drive to help with the turning movement. She said that Kroger is willing to make these improvements. Ms. Wiseman said that, as for the lighting concerns expressed, the previously submitted exhibit shows there will be a significant decrease in illumination.

Ms. Wiseman said that the residents of this area have mentioned "quality of life." She submitted an aerial photograph, and then said that from what had been said, the Hartland Shopping Center should not be in the middle of a neighborhood. In looking at this area, there are townhouses, duplexes and single family homes surrounding the shopping center, and there are homes within 150 feet of the fuel center. She said that the "quality of life" for these residents has not decreased since the fuel center was installed. She then said that, from what she understood, the residents of Chinoe Shopping Center would be happy to drive into another neighborhood for their fuel. They just don't want a fuel center in their neighborhood. If gas stations were unsafe, then they should only be permitted in the heavy industrial areas. This is not true and it has been acknowledged for many years that gas stations are appropriate in these areas.

Ms. Wiseman concluded by saying that, as hard as it is to not be emotional about this request, the Commission must decide whether this proposal causes a concrete problem in terms of traffic and so forth. She then said that they have demonstrated that this proposal would not create a problem and requested the Commission to approve this request, subject to the conditions set forth by the staff.

Audience's Rebuttal – Mr. Fields said that the petitioner did not submit a photograph of the Chinoe Shopping Center, so there is no way to compare it to the Hartland area. It is very difficult to make a comparison between the two shopping centers without a second photograph.

Mr. Willson said that he walked the Hartland neighborhood, and the people who lived around the fuel center loved it, but for one person, directly across from the fuel center, who felt it would decrease his chances of selling his home. That person indicated that he would be against this proposal.

Mr. Thomas said that while during this meeting, he had Google "fires associated with Kroger stores," and noted that there were several articles and videos that came up on the internet.

Ms. Karrs, 3500 Creekwood Drive, was present. She said that in looking at the Hartland area, Kennesaw Drive is not a short dead-end street. The distance between the fuel center and those homes, from any point, is much further away than it would be with this proposal.

Mr. Pouga said that the only way the submitted photograph would be similar to this proposal was if the fuel center was relocated closer to the sidewalks and houses.

Ms. Willson displayed on the overhead projector two photographs using her iPod, and said that some states have adopted warning labels to be placed on the pumps that mention benzene hazards. She proceeded to list several government agencies that have stated that benzene is a carcinogen. Mr. Owens noted that the Commission understands her concerns; but at this time, the Commission is requesting only rebuttal comments. However, he said that the information gathered could be submitted into the record. Ms. Willson continued to explain the two photographs, and said that Chinoe Road and Creekwood Drive are narrow, making the houses closer to the shopping center. She felt that there would not be sufficient landscaping to shield the houses on these streets.

Staff Rebuttal – Mr. Martin indicated that the staff had no rebuttal comments.

Planning Commission Questions – Mr. Owens asked if there were any questions for Traffic Engineering at this time. Mr. Berkley asked if Traffic Engineering had any comments concerning Creekwood Drive versus Chinoe Road access for the delivery trucks. Mr. Neal said that Creekwood Drive has better sight lines at the intersection than the shopping center entrance on Chinoe Road, and if the turning radii could be worked out, he indicated that he could see no problems.

Mr. Owens asked if the staff was in agreement with the Traffic Impact Study submitted by the applicant. Mr. Neal replied affirmatively, and said that the study was reasonable with the number of pumps being proposed. He then said that traffic volume on Chinoe Road agrees with everything that had been provided in the study. There would be more turning movements in and out of the shopping center, but that can be addressed by lowering the speed limits through the curve of Chinoe Road.

Ms. Roche-Phillips asked if it is customary to incorporate cyclist and non-vehicular traffic into a traffic study. Mr. Neal replied negatively, and noted that it would need to be specifically requested. Ms. Roche-Phillips then asked if there are bike lanes on Chinoe Road, to which Mr. Neal said that there are not.

Mr. Owens said that since new information was presented to the Commission, he asked if Ms. Wiseman had any rebuttal comments. Ms. Wiseman indicated that she did not.

Mr. Owens said that, at this time, the hearing would be closed for the Commission to discuss this proposal and make recommendations.

Planning Commission Discussion - Mr. Berkley asked if the applicant would be agreeable to a condition being added stating that "Creekwood Drive would be used for deliveries." Ms. Wiseman replied affirmatively.

Ms. Roche-Phillips said that the petitioner had indicated that there are 3 reasons the Commission could deny this request when a permitted use is authorized in that zone, and asked if legal counsel agreed with the previous comments on the Zoning Ordinance. Ms. Boland explained that Article 21-7(e) of the Zoning Ordinance states that *"the Commission may also disapprove or modify the requested amendment if it finds that such amendment will adversely affect the public health, safety and welfare, or alter the essential character of the development as originally approved."* She said that Ms. Wiseman emphasized what the particular problems could be with this proposal, as in public health, safety and welfare issues. Ms. Wiseman replied that those 3 issues were mentioned by one of the audience members. She then said that she had quoted Article 21-4(d) of the Zoning Ordinance during her presentation, which reads: *"The Commission may modify or disapprove the development plan if it finds the plan does not comply with the requirements of the Zoning Ordinance, and when applicable, the Land Subdivision Regulations or if it finds there are existing or potential flood, drainage, traffic, topographic, health, safety, nuisance or other similar problems relating to the development of the subject property."* Ms. Wiseman said that, in addition to those items, the Commission can consider the provisions of Article 21-7(e), as indicated by Ms. Boland. She then said that the Commission must cite specific problems, not just because they believed the use is inappropriate. Ms. Boland agreed that these two sections of the Zoning Ordinance do act together, but she was speaking to an amended development plan. She said that this still applies when considering an approval or disapproval of any plan. With that being said, she noted that what had been told to the Commission is accurate.

Mr. Penn said that this proposal does not pass the "smell" test in his opinion, and that this is a tough decision for him. He then said that it had been referred to the full Commission, which meant to him the staff did not take a position on this request. Ultimately, it is up to the Planning Commission to make a decision, which is why there are referral recommendations. He said that if the staff had recommended approval, the Commission would need to find reasons for disapproval. He then said that since this plan was referred, the Commission needs to consider what both attorneys have said, as well as the testimony from the audience, and the practicality of it.

Ms. Blanton noted that this request was referred by the Subdivision Committee, and not by the staff. Mr. Martin noted that that was correct, noting that the staff had recommended approval of this plan to the Subdivision Committee, and that the Subdivision Committee had referred the request to the full Commission.

Mr. Penn asked if Ms. Boland if she had drafted findings for disapproval. Ms. Boland said that that it is up to the Planning Commission, and hopefully the legal standards have been set out sufficiently for the Commission to make that determination.

Mr. Cravens said that Kroger had done a good job in modifying their development plan, but he was inclined to vote against this request. He then said that there is not enough room for the fuel pumps, the canopy and so forth in this parking lot. The residents are concerned with the close proximity of the pumps to their houses; and in looking at the development plan; the pumps will be closer to Kroger's doors. He said that he had visited the site and there is not enough room for this use in this shopping center. With that being said, Mr. Cravens indicated that he would be voting against this request.

Ms. Copeland said that this community needs a healthy shopping center, and it needs a grocery store. Right now, the choice is Kroger. She then said that the community wants Kroger to succeed so that there is not an empty building in the shopping center; otherwise, the shopping center doesn't survive. At the same time, Kroger does not want to be in a diminishing area and they need a healthy neighborhood, otherwise it will move out of the area. Ms. Copeland said that this is a gray area and it is not easy, but she is inclined to vote against this request. She believed that this area will stay healthy, if this is the path chosen.

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Ms. Roche-Phillips said that she had tried to put herself in the position of the neighbors who are faced with this dilemma. She asked if the pumps could be relocated deeper into the shopping center, which seemed to be the obvious solution last time. This would provide a greater distance from the neighbors. She said that she applauds Kroger for their modifications and for making an attempt to meet the neighbors half way; but she is conflicted, and she understands what the neighbor's are saying. She recognized that the distance between the two may not be adequate, but this request does meet the terms of the Zoning Ordinance. Ms. Roche-Phillips agreed with Ms. Copeland's comments, noting that this is definitely a gray area.

Ms. Blanton said that based upon the staffs' recommendations, the fact that this request does comply with the Zoning Ordinance, and with Kroger modifying the development plan, she is in support of the request.

Action - A motion was made by Mr. Cravens to disapprove DP 2011-96.

Legal Comment - Ms. Boland said that there needs to be a formal finding of fact for disapproval, since the Zoning Ordinance does indicate in the case of a postponement or disapproval that the minutes must clearly reflect the reasons for that decision. She requested that the Commission make those findings clear in their action.

Mr. Cravens said that the reasons for disapproving this request are for health reason, for traffic reason and he does not believe they have enough room to do it.

Action - The motion was seconded by Mr. Penn and carried 6-2 (Blanton and Owens opposed; Beatty and Brewer absent)

Note: A recess was declared by the Chair at 3:35 p.m. and the meeting re-convened at 3:43 p.m.

2. DEVELOPMENT PLAN

- a. DP 2012-11: LEXINGTON MALL (AMD. #13) (SOUTHLAND CHRISTIAN CHURCH) (4/28/12)* - located at 2299, 2349 and 2401 Richmond Road. (Council District 5) (Strand Associates)

Note: The purpose of this amendment is to add an outlot, revise parking and drive aisles, and reduce the pond/detention basin area along Richmond Road.

The Subdivision Committee Recommended: Postponement, for the following reasons:

1. The new bank outlot proposed for the property seems to violate the visibility and building setback (from Richmond Road) that was in effect for the adjacent big-box store as recently as 2010.
2. The amendment will, as proposed, adversely alter the essential character of the development originally approved along Richmond Road, as a significant "water feature" approved in 2010 is to be virtually eliminated.

The staff wishes to further explore these matters prior to making a substantive recommendation on this proposed amendment.

Development Plan Presentation – Mr. Sallee identified the amended development plan on the Agenda, and noted that this request is for the 13th amendment for the Lexington Mall (Southland Christian Church) property. This property is located at 2299, 2349 and 2401 Richmond Road. He said that the staff had previously distributed a packet with several exhibits, to include the minutes from September, 2010 meeting, the topography of the area and other information that will outline the staff's presentation on this proposal.

Mr. Sallee then directed the Commission's attention to an aerial photograph of the area to orient them to the location of the subject property and the nearby street system, as well as the existing uses in the general vicinity. He noted that Richmond Road is to the west of the subject site, and along this location there are two signalized intersections. Directly across Richmond Road is the Kentucky American Water Company. He said that the subject property is east of the Idle Hour Subdivision and south of Idle Hour Park. He indicated that Woodhill Drive is to the north of the site, and there is a signalized intersection at the Woodhill/New Circle Road intersection, location as well.

Mr. Sallee said that the property in question is the former Lexington Mall site that is currently being renovated; and in looking at this property, it has changed since the aerial photograph was taken (in 2010) as the proposed Lexington Mall building has been reduced in size. He said that there is an existing Home Depot store to the east toward New Circle Road and there are four outlots to the south along Richmond Road. These outlots include the Applebee's restaurant, a branch bank, an abandoned gas station and the Perkins restaurant. He said that there is a portion of the existing reservoir #1 that crosses Richmond Road and is situated in the center of these outlots.

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Mr. Sallee directed the Commission's attention to the rendering, and reoriented them to the surrounding street system. He pointed out the location of the previous, existing and proposed use; and said that the applicant is proposing to use the former Dillard's building for the church auditorium. He then said that the purpose of this 13th amendment is to add an outlet, revise parking and drive aisles, and reduce the pond/detention basin area along Richmond Road. He noted that the proposed change is for the outlet between the Applebee's restaurant and the vacant gas station. He said that the entrance into the subject site will remain as is, but the service road that connects these two entrances will be relocated deeper into the property. This change will slightly diminish the size of the front lawn area. He then said that a 5,400 square-foot restaurant, with a drive-through facility and off-street parking, is being proposed for the outlet closest to the Applebee's restaurant; and a branch bank, with a drive-through facility, is being proposed for the other outlet. He said that both of these uses will utilize the service road, noting that there will be no direct access to Richmond Road or to the entrance roads.

Mr. Sallee said that the subject property is in a Planned Shopping Center (B-6P) zone, and all of these proposed uses are permitted in this zone. He then said that in looking at the development plan, there have been a couple of changes since this was first approved by the Commission. He said that there were 1,400 parking spaces on the original submittal, but on this amendment, the parking has been reduced to 1,356, but still leaving a surplus of 972 over that required.

Mr. Sallee directed the Commission's attention to a staff exhibit on the overhead and said that this relates to the floodplain and the existing pond on the front of the site. He identified the location of the edge of the pond, and the building line that is required by the B-6P zone. He also identified the proposed floodplain line, as well as the area of the pond that is proposed to be filled in to allow the two outlets to be constructed. He then said that, in looking at the proposed development plan, there is a note on the plan related to a Conditional Letter of Map Revision (CLOMR) that was approved by FEMA a few years ago. This approval would allow the construction of these outlets to begin. He noted that prior to any activity on this site; a Special Use permit may also be required from the Division of Engineering. Mr. Sallee said that the subject site is regulated by the Richmond Road Landscape Ordinance; and when there are changes being proposed to the landscaping along Richmond Road, they must be approved by the Lexington-Fayette Urban County Council.

Mr. Sallee referred the Commission to the currently approved development plan, and explained the original layout of the site. He said that the applicant had proposed only one outlet near the Applebee's restaurant, and approximately 40 percent of the existing pond was being filled in. He said that the outlet was proposed to be 7,000 square feet and the actual use had not yet been established. This change was one of the major differences between the approved development plan and the current plan submission.

Mr. Sallee said that when this amendment was presented to the Subdivision Committee, there was a long discussion among the staff, the applicant, representative of the Idle Hour neighborhood and the Committee members. He noted that the neighborhood had a number of questions and concerns concerning this proposal during that meeting. Directing the Commission's attention to the staff exhibit, he said that the Division of Water Quality had addressed those concerns with a list of responses (pages 4 through 7); and should the Commission have any further questions, representatives from the Division of Water Quality were present.

Mr. Sallee briefly summarized the Division of Water Quality's three-page report, noting that the water drainage and elevation of this area was discussed at the Committee meeting (item #4). He said that Strand's engineers had indicated that the normal elevation of the pond is at 972 feet (above sea level). The elevations of water drainage in this area were discussed and were compared to other areas in the neighborhood, as well. Mr. Sallee said that there was a concern with the pond being filled in and whether or not it violates the Consent Decree (item #7). Water Quality had determined that if the pond is filled it would not violate the Consent Decree. He said that the flooding "worst case scenario" would raise the downstream reservoir less than 1 inch. He then said that the existence of the pond and sanitary sewer issues in this area have been determined to be substantively unrelated (item #7). Mr. Sallee said that the original CLOMR was accepted by FEMA in August, 2009, and the proposed development plan is not materially different from the accepted CLOMR (item #8). He then said that in reviewing the questions and subsequent answers, the Division of Water Quality did make an attempt to address the concerns from the Subdivision Committee meeting.

Mr. Sallee explained that the staff had also gathered information regarding the flooding and floodplain within Lexington Mall area in an attempt to help illuminate those discussions from the Subdivision Committee meeting. He said that, in reviewing all of the information, the staff could establish the location of past flooding. The maps show the area near and around the Lexington Mall area that indicate past flooding. He said that the staff also reviewed and provided a 1980s environmental map for the Lexington Mall area, and it shows the path of the watershed and the drainage leading to the nearby reservoir. He noted that there is karst activity in this area such as sinkholes and fault lines, one of which runs through the Idle Hour Subdivision.

Mr. Sallee directed the Commission's attention to another map that indicated the location of the Idle Hour Park (shown immediately to the north of the subject property), as well as the Idle Hour Tributary. He then said that it is important to note that the water from the Idle Hour Subdivision drains toward the park, and the water from the park

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runs into a piped line toward the reservoir on the other side of Richmond Road. He noted again that this area is environmentally sensitive - there are fault lines, sinkholes and hydrological problems, but no caves are indicated on the map.

Mr. Sallee said that the current DFIRM map shows the floodplain area to the north of Richmond Road to be much wider than the 2008 DFIRM map. He then said that the map also shows the Idle Hour Tributary pipe and the areas that have been study as indicated in "zone AE." The area beyond the Idle Hour Park has not been studied at this time. He said that in reviewing the 2008 and 1992 FEMA floodplain maps, the 1992 information shows the floodplain area to be about 45 feet from the Richmond Road right-of-way. Through the 2008 map revisions for this area, there were significant changes, which showed the pond and Perkins restaurant to be entirely in the floodplain. He said that, given the accepted CLOMR, the proposed floodplain area matches the 50' building line that is required in the B-6P zone.

Mr. Sallee then said that even though there are environmental concerns, the character of the development and the fact that it is changing has also concerned the staff. He said that the staff had made a recommendation for postponement of this plan to the Technical Committee and the Committee agreed. The Technical Committee forwarded their recommendation on to the Subdivision Committee, who reviewed the applicant's request and was in agreement with the postponement recommendation.

Mr. Sallee said that the primary reasons for the postponement recommendation was that the previously approved 40% fill had changed to 80% fill for the front of the subject property. He said that this is a significant change from the previously approved development plan in 2010. He then said that Article 21-7(e) of the Zoning Ordinance states that "*the Commission may also disapprove or modify the requested amendment if it finds that such amendment will adversely affect the public health, safety and welfare, or alter the essential character of the development as originally approved.*" The staff has recommended postponement of this request, hoping that the applicant would submit a revision before today's meeting; however, that did not happen and the applicant has indicated that they wish to move forward with this request.

In conclusion, Mr. Sallee said that the staff is recommending disapproval of this amendment, for the following reasons:

1. The new bank outlot proposed for the property seems to violate the visibility and building setback (from Richmond Road) that was in effect for the adjacent big-box store as recently as 2010.
2. The amendment will, as proposed, adversely alter the essential character of the development originally approved along Richmond Road, as a significant "water feature" approved in 2010 is to be virtually eliminated.

Mr. Sallee noted that two letters in support from Home Depot and Kentucky American Water Company had been submitted to the Commission, which were circulated to the members.

Commission Questions – Ms. Blanton said that she was confused with the first reason recommended for disapproval, and asked about setback line noted in the staff exhibit. Mr. Sallee said that in 2010, there was discussion during the Committee's review process about the visibility for the Home Depot store from Richmond Road. He then said that the applicant had spoken with a Home Depot representative, and the road visibility issue has been resolved. At the Technical Committee meeting, the staff did note that there is a significant difference between the 2010 approved development plan and the revised submission.

Ms. Blanton asked if the change the staff is citing to the character of the development is the issue and not a flooding issue. Mr. Sallee said that that is true, given the CLOMR information at hand. He then said that the approved development plan had proposed to fill what is currently indicated on the 2008 FEMA map. He agreed that this is more of an issue regarding character of the development than it is a floodplain issue. He said that the Division of Engineering could also provide comments on that issue.

Ms. Blanton asked what needs to happen on this request for the staff to change their recommendation from postponement to approval. He said that the Commission can disapprove this request according to Article 21-7(e) of the Zoning Ordinance, or the Commission can allow modification making the water feature more in line with the features from the 2010 plan approval. Ms. Blanton asked if that modification would require one of the outlots to be removed. Mr. Sallee replied affirmatively, but that a major redesign would allow both remaining, but also requiring the internal circulation to be relocated much farther from Richmond Road.

Ms. Copeland asked for clarification on the two staff exhibits. Mr. Sallee said that the two maps in the staff exhibit reference the environmentally sensitive areas, as well as the reported floodplain issues for the Idle Hour neighborhood and the general area. He then said that the map is an indication of where the overflow occurred in the Lexington area. Ms. Copeland asked if FEMA is aware of this information. Mr. Sallee replied affirmatively. Ms. Copeland inquired about a map document in the staff exhibit. Mr. Sallee explained that the map shows the upper regions of the ridge line, sinkholes, fault lines and how the watershed flows toward the subject property and beyond toward the reservoir.

The Chairman said that at last week's Subdivision Committee meeting, there were several questions regarding the flooding in the Idle Hour neighborhood. He asked if the Idle Hour neighborhood is flooding as a result of the basin backing up into the neighborhood or if it is because the flood water is not leaving the neighborhood fast enough. Mr. Charlie Martin, Director of the Division of Water Quality, said that the flooding information shown on the staff's map are flooding complaints filed with the LFUCG. He then said that there are many culverts upstream acting as a control by retaining the water moving out of the neighborhoods. Therefore, the retaining pond on the subject property never "comes into play." He said that one way of thinking about this area is to imagine 4 lanes of traffic diverted down to one lane. He said that there will be backups created, and the engineering report has identified the culverts as being the culprit regarding flooding in this area. He then said that the LFUCG GIS system doesn't recognize the pond as being a control for this area, adding that there are more controls upstream from this property than there are downstream. Mr. Martin said that the FEMA floodplain map does show the floodplain area extending into the Idle Hour park area. He then said that the staff is relying on the engineer's report stating that the proposed changes will not create a back water effect. With that being said, the staff does not believe the pond is the issue for the flooding in this area. He said that there is so much water in this area, it is like trying to pour a bucket of water into a funnel.

Ms. Roche-Phillips asked if a 404 wetland permit is required for any changes to the water feature. Mr. Greg Lubeck, Division of Engineering, said that regardless of the CLOMR, the applicant would need to obtain the necessary permits since this tributary is shown on the map as a blue line water feature. Ms. Roche-Phillips asked if the applicant has begun the permitting process. Mr. Lubeck replied that the applicant has indicated that they have already received the permits.

Ms. Copeland said that the staff had stated that the floodplain area behind Dillard's, almost from the boundary of the Southland Christian Church property, had not been studied. She said that behind Dillard's/McAlpin's, the watershed goes up a draw. She believed the staff had stated that that was not a part of the current water study. She asked if that would affect a future CLOMR, since this part of the watershed wasn't studied. In reply, Mr. Lubeck said that, in reviewing the FEMA floodplain map, the area noted as "limits of detailed study" is the boundary line; and normally there is not a detailed study of the area within one mile from the edge of the drainage area. Ms. Copeland said that water runs down hill, and Mr. Lubeck responded by saying that anything downstream will not affect upstream activity. Mr. Martin said that the FEMA models account for the upper region of the watershed, which includes the point of where the water comes through the drainage area. The analysis accounts for how the water will spread out above that point.

The Chairman thanked the Division of Water Quality staff for being present at today's meeting and their patience in answering the Commission's questions and alleviating their concerns about how this proposal will not affect the upstream areas.

Mr. Cravens asked if this request is a final development plan. Mr. Sallee responded that this is an amended final development plan. Mr. Cravens confirmed that the applicant will build the proposed buildings as shown on the development plan. Mr. Sallee said that if the Commission approves this amended development plan, the applicant would be tied to the square footage limits shown on the plan proposal. He then said that any deviation would require another plan amendment.

The Chairman noted that there was no time limit set for the previous discussion, and he would not be imposing a time limit for the applicant's representative, but he encouraged everyone to keep their presentation moving forward.

Representation – Darby Turner, attorney; Mike Woolum; Sara Tuttle; Morgan McIlwain and Craig Avery, project manager, were present on behalf of Southland Christian Church. He said that he appreciated the staff's presentation, as well as the Division of Water Quality being present at today's meeting. He said that Mr. Sallee referenced some of the Division of Water Quality's responses to the previously posed questions, noting that he had color-coded Strand Engineers' responses in "red" and the Division of Water Quality's response in "blue."

Mr. Turner gave a brief description of the history of this project, and said that a number of the same Commission members were present in 2010 when this request was originally approved. He then said that at that time the church was in the process of purchasing this property, and the Planning Commission's approval was part of the purchase. Since that time a great deal of design and engineering work, as well as cost analysis, which resulted in the project being about 4 million dollars over budget. He said that the pond has about a foot of standing water with sediment on the bottom. After reviewing the cost of cleaning up the pond and resurfacing the parking lot, it resulted in being over budget, which is the reason they are amending their proposal with the outlots. He then said that the income generated from the two outlots will help pay for the cleanup of the pond and resurfacing the parking lot. He noted that one of the outlots had been approved by the Commission in 2010 and they are now proposing to add the second outlot.

Mr. Turner directed the Commission's attention to the staff's recommendation and said that item #1 refers to the view shed from Richmond Road. He said that this is not a requirement of the Lexington-Fayette Urban County Government, but rather it is a private agreement between Home Depot and Southland Christian Church. He then said that, in their opinion, this issue had been resolved as indicated with the letter of support from Home Depot. Mr. Saltee said that it is still a factual statement and it is a difference in the two development plans. He then said that it would be up to the Commission's discretion. Mr. Turner said that this is a private contractual agreement between Home Depot and the church, and Home Depot has stated that they are fine with this proposal; therefore, they believe that item #1 is resolved. Mr. Turner said that item #2 refers to the amendment adversely altering the essential character of the development from what was originally approved in 2010. He then said that in order for the Commission to deny a request, they must find that the plan does not comply with the requirements of the Zoning Ordinance and, if applicable, the Land Subdivision Regulations; or if it finds there are existing or potential flood, drainage, traffic, topographic, health, safety, nuisance or other similar problems relating to the development of the subject property (Article 21-4(d) of the Zoning Ordinance). With regard to Article 21-7(e) of the Zoning Ordinance, he said that this recharacterizes the health and safety issues, as well as whether a development alters the essential character from what was originally approved. He said that it is curious to him that there are higher standards for an amended plan than for what was originally approved. He then said that from a legal point of view, to deny a request the amendment must affect public health and safety, not because of the aesthetics of the development.

Mr. Turner said that a good deal of discussions at the Subdivision Committee were related to the flooding impact and whether or not the reconfiguration of the pond would impact this area. He then said that, as Mr. Martin (Division of Water Quality) had indicated, reconfiguring the pond will not have an effect, nor will it impact the Idle Hour neighborhood. If his client could help the neighborhood, they would, but they can not. He said that his client's proposal has no impact on the neighborhood upstream from the church. Mr. Turner said that other than the concern with flooding, there has not been any other issue, such as health, safety, traffic and so forth. He then said that the criteria under which this was originally approved has not changed. The change to this development is a very small part compared to the overall plan. He said that this amendment is for two outlots and the pond, not the former Lexington Mall building. He then said that by definition it is a change, but it is not a significant change to the main core of what is happening to the Lexington Mall property.

Mr. Turner indicated that the Idle Hour Neighborhood Association and neighbors are present at today's meeting, and they were also present at the Subdivision Committee meeting. He then said that his client and the engineers had met with them on March 7th and, at that meeting, everything was explained to the neighbors. He noted that their concerns were addressed, and he believed that they made great headway in helping them understand what is happening in their watershed, the flooding issues and how reconfiguring this pond will not impact the neighborhood.

In conclusion, Mr. Turner said that Morgan McIlwain, landscape architect, was present to give a brief summary of what is being proposed for this development.

Mr. McIlwain presented two exhibits to the Commission, and said that he has experience with the corridor issues and is familiar with the Corridors Committee. He directed the Commission's attention to the outlot perspective view, and said that they are trying to maximize this area for not only the church, but the adjacent outlots. He then said that they want the landscape to be visually attractive and to accent the entrance points to the property. He explained the type of material that will be used to form the outline of the pond, as well as the architectural features for this area. He further explained that the landscape for this area will consist of a mixture of trees that are native to the area with rock ledges along the dry basin that will act like an intermittent stream. He said that the water will enter the pond and be recycled back to the dry basin. He then said that they are trying to focus the attention on the entry points into the campus through this concept.

Mr. Turner said that they have laid out their case to the Commission and noted that this proposal does not affect the neighborhoods upstream. He then said that this proposal provides 45 percent more water storage than what was approved with the CLOMR. In closing, he requested that the Planning Commission approve this request.

Commission Questions – Ms. Copeland asked about the scale of the Outlot Concept Plan. Mr. McIlwain said that the rendering is scaled at 1" equals 30'. Ms. Copeland then asked Mr. McIlwain to point out on the Outlot Concept Plan the view shown on the Outlot Perspective View rendering. Ms. Copeland said that it seems that the building is approximately 150 feet back from the corner. Mr. McIlwain pointed out the 50' building line and said that the building has a setback of 50 feet. Ms. Copeland said that the Outlot Perspective View is misleading due to the size of the building on the rendering. Mr. McIlwain replied that the building is a one-story structure.

Audience Comment – The Chair asked if anyone in the audience wished to show support for this request. There was no response. The Chair asked if anyone in the audience was opposed to this request. Jim Capley, President of the Idle Hour Neighborhood Association, was present. He said that he has lived in this area since 1956, and the Idle Hour neighborhood is forced to handle most of the storm water from the surrounding areas. He then said that the path of the storm water comes from Liberty Road, through the golf course to St. Ann Drive and on toward

Breckenridge School. He submitted a series of photographs for the Commission's review, and gave a brief summary of each. (A copy of the photographs is attached as an appendix to these minutes). He said that this neighborhood receives a massive amount of storm water from the surrounding areas, including the Woodhill neighborhood. He said that the culverts in the park are 15 feet deep, and after a heavy rainfall, the water is still standing two hours later.

Mr. Capley said that when the neighborhood heard that there was a proposal to fill in the pond; it concerned the residents of the area. He said that the residents have seen the massive amount of water that runs through this area, ending at the pond. When this area was developed, the developers did not believe the culverts needed to be bigger than they are, but the current size of the culverts can not handle the storm water, resulting in flooding. He said that this area has sanitary sewer issues; and according to the Consent Decree, this problem is to be addressed. He then said that when the sewer system can't handle the overflow, everything that is put down into a toilet eventually ends up in the pond.

Mr. Capley said that the applicant, their representative and engineers did meet with the neighborhood association and their engineer, and at that meeting the neighborhood was assured that what is being proposed will not further impact the Idle Hour neighborhood. He then said that they are not opposed to the pond being filled in; however, they want the record to reflect that once this project is completed, and based upon what the neighborhood association was told, there will not be substantially more flooding than what the neighborhood is experiencing today. He commented that hopefully Southland Christian Church's liability insurance can compensate the residents if more flooding does occur as a result of the new development.

In conclusion, Mr. Capley said that the neighborhood is not disputing this proposal. They were told it will not adversely affect the neighborhood, and the neighborhood is hoping the engineering does not fail. Once this project is completed and operational, the neighborhood does not want to have regrets with regards to the church. He said that there are serious storm water management problems in the neighborhood that need to be addressed by the City. The sewer system for this area is inadequate, and until the problems are addressed, the proposed pond will not be pristine, but rather will be full of sewage.

Mr. Owens said that the Commission understands that there are storm water problems in the neighborhood, and the Division of Water Quality is present to address some of those concerns. He asked if Mr. Capley had any further information pertaining to the proposed request. Mr. Capley responded that there is a concern with reducing the size of the pond and whether or not it will be able to hold the same amount of water after the project is completed.

Rebuttal – Mr. Turner said that they have covered all pertinent information. The flooding issues in the Idle Hour neighborhood have been reviewed and addressed with great detail through the Division of Water Quality and the applicant's consultants. He then said that they are very comfortable with this project, and they are not adding to the storm water situation in this area. With the improvements being done on this site, and with the City making the necessary improvements to storm water management, hopefully this area will see some relief.

Mr. Sallee said that Ms. Clarissa Spawn, who resides at 1909 Bellefonte Drive, could not stay for the remainder of the meeting. He then said that she had asked that the staff to submit her note in opposition to the Commission. (A copy of this note is attached as an appendix to these minutes).

Mr. Sallee said that as for the two finding that appear on today's agenda, the Commission could consider either findings or both. He then said that finding #1 is a factual statement despite the letter of support from Home Depot. The staff does believe that without a change to the proposed plan, it should be disapproved. He said that filling in the pond and relocating the one building does change the essential character to the original development.

Commission Discussion – Ms. Copeland displayed on the overhead for the Commission's review two historic aerial photographs of the Lexington Mall property from LFUCG files. She said that the first photograph was taken back in the 60s, and it shows what the watershed for this area looked like before Dillard's/McAlpin's was built. This area was all under water. She indicated that she had marked the photograph with the location of the golf course, Richmond Road and the Southland Christian Church site.

Mrs. Copeland stressed the extensive coverage of the lake area, and how it formerly extended up into the present day ball park area. With the assistance of the audio-visual cameraman, she showed the approximate location of the present day McAlpin's/Dillard building in the lake area. She stated that it was necessary for the McAlpin's/ Dillard's building to be built on piers (to suspend it above the fill area) as it was built in the middle of the lake area. She then said that in the 50s, driving down Richmond Road, you would see an expanse of water on both sides. In the beginning, the half moon basin was bigger than it is now. The basin was not silted up or a left over abandoned basin, but it had weeping willows and cat tails, and was a naturalized area that was bigger and well maintained. She said that today they are looking at diminishing that body by one more step and may be losing it because it's not too far from putting it underground and losing the body of water on that side of the road. Ms. Copeland said that she wanted to let the Commission know this is what had happened within 40 years.

* - Denotes date by which Commission must either approve or disapprove plan.

Ms. Blanton said that there is a development plan before the Commission that is attempting to solve a long-standing problem and an eyesore in the community. She then said that the Commission speaks about being flexible and encouraging infill and redevelopment while preserving green space, and this plan does that, noting that maybe it has changed substantially, but they have justified amending this development. Ms. Blanton said that if the amended proposal was what had been presented to the Commission in the beginning, they would be likely overjoyed. She then said that the Commission should not give the impression that if the bar is set low, it would be approved, but then set the bar high and there would have to be a legitimate reason for change or the applicant would be penalized. If this were to be postponed, that might be the unintended consequence. Ms. Blanton said that she is in support of the proposed development, and was ready to make a motion once everyone had an opportunity to discuss the plan.

Ms. Roche-Phillips noted that she agreed with Ms. Blanton's statement concerning their procedures. She said that with respect to the staff's findings for disapproval, she agreed that the essential character of the original development had changed; but she likes the proposed modification to the water feature. She then said that the water feature does not encroach into the development as it did with the approved development plan. The applicant still needs to obtain the necessary permits, and she did not have any problems with this proposal. She said that she does not believe that this proposal will have any effect on the Idle Hour neighborhood, and the topographic maps have shown that there will no effect. She then said that, should there be flooding on Richmond Road, the reservoir next to Richmond Road can accommodate the water. Ms. Roche-Phillips stated again that she has no problems with this proposal, and she would second Ms. Blanton's motion.

Mr. Penn asked if this is the only area on the property where an outlot could be created and if it was a parking or an availability issues. He said that he is taking this at face value, and this is a financial issue; those outlots will be leased and seem to be needed to complete the project. Mr. Turner said that that is correct, noting that those lots will be considered as non-church related items. Mr. Penn said that what he meant was that it is odd for a church to allow a bank and restaurant in front of the sanctuary, effectively blocking the view of the church. He then said that the Southland Christian Church has made many good decisions throughout the years, but he asked why are these outlots along Richmond Road, within the view shed. Mr. Turner said that normally the outlots would be out of sight and set back from Richmond Road, but that could create a problem and make the lots less valuable. He then said that they did not want to crowd the church and lose parking, and they also wanted to establish a separation between the two uses.

Craig Avery, project manager, said that this is not being done lightly and there has been a lot of discussion concerning this project. He then said that they would prefer to stay with the original proposal; but due to the monetary issue, this is something that must be done. They reviewed the area and focused on the entrance to the property to make it the most effective and nicest area of the property. He said that people believed the church was wrong to move to Harrodsburg Road, but that was a good move. He noted that there will be more traffic generated on the property with people being curious as to what is happening there. Mr. Penn said that he is not questioning the church's success, but is questioning the location of the two outlots.

Mr. Berkley said that he does not have any problem with the proposed plan. He sees this part of the corridor in a redevelopment phase and hopes this will spill over to the former gas station lot since it has become an eyesore.

Mr. Wilson said that he has no particular problem with the plan, noting that with the staff making a recommendation for postponement, it left the impression that there could be the possibility of a compromise. He asked why the staff didn't just oppose the request from the beginning if that was not the case. Mr. Saltee replied that in his opening remarks, he stated that the applicant did not wish to postpone this request; and with no revisions to the plan, the staff would recommend disapproval of it, subject to the two findings listed on today's agenda. He then said that the staff believes the amount of fill will significantly change the character of the development.

Ms. Copeland said that you can go on the government web site and find out the traffic count for Richmond Road. She then said that she thought Traffic Engineering would be at the meeting to answer questions, but she believed the traffic count is in the realm of 29,000 people traveling this road every day. She then said that this is not a neighborhood issue – i.e., about the aesthetics or losing the water body. This is a city situation. She said that this is quality versus quantity for our city. She then said that if the Commission postponed this for one month and noted at all the data that had been presented. It would not hurt to postpone this, and it might help the city see and provide opinions about what they want this amenity to be that we all have taken for granted, having water on both sides of the road for such a long time. She said that it would be a good idea and there's a lot to be discovered. She then said that they talk about the aesthetics here, and the public has not had a chance to come and provide input, so she asked that this be postpone. The applicant can certainly handle a postponement; and if the public comes forth and agrees to this plan, that's fine. If they say they want more water and reciprocal parking and push it back a little bit then they can compromise. Ms. Copeland asked what they had to lose by postponing and letting the city come in and provide an opinion.

Ms. Blanton said that this proposal has been well publicized on television that the Planning Commission would be reviewing this request today. She then said that the neighborhood association is the only body to come forward, and the public would have more rights to infringe upon the design if they were funding this project. She noted that she would like to make a motion to approve this request once discussions were completed.

Mr. Owens asked if the applicant's representative would like to rebut any comments made by Ms. Copeland's presentation. Mr. Turner said that the information presented was accurate concerning the history of the land.

Action - A motion was made by Ms. Blanton, seconded by Ms. Roche-Phillips to approve DP 2012-12.

Mr. Owens asked what requirements should be listed for this item. Mr. Sallee explained to the Commission that the following typical "sign-off" conditions could be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.

Mr. Sallee added that, based upon the comments received at the 2/22/2012 Technical Committee meeting, the following conditions could also be considered, as well:

5. Add sidewalks from access road to outlot buildings A & B.
6. Addition of a dumpster location to outlot A.
7. Addition of handicap accessible parking for outlot A.
8. Denote that the Richmond Road Landscape Ordinance will need to be amended.
9. Addition of sanitary sewer easements for 1600 E. New Circle Road outlot.
10. Revise note #7 to reference Chapter 16 of the Code of Ordinances.
11. Addition of a note referring to grease traps for outlot (restaurant).

Discussion of Motion - Mr. Owens asked if the applicant is agreeable to the list of recommendations. Mr. Turner asked for clarification of condition #10. Mr. Sallee and Mr. Martin both said that condition #10 is a Division of Water Quality requirement. Mr. Turner said that they are in agreement with the list of conditions, as presented by the staff.

Amendment to Motion - Mr. Penn asked if the motion could be amended. Ms. Blanton agreed, and said that she would like to amend her motion to include the conditions as outlined by the staff. Ms. Roche-Phillips, as second agreed to the amendment.

Action - The motion carried 7-1 (Copeland opposed; Beatty and Brewer absent).

Note: Mr. Berkley and Ms. Copeland departed at this time.

- b. DP 2011-62: RIDDELL PLAZA, LOTS 1 & 4 (5/22/12)* - located at 301 and 313 Burley Avenue.
(Council District 3) **(EA Partners)**

Note: This plan was approved by the Planning Commission at its September 8, 2011, meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection.
10. Provided the Planning Commission approves an amended Final Record Plat that addresses the conflicts with the building line setback and the existing easements prior to certification.
11. Document compliance with Article 15-7 of the Zoning Ordinance (infill regulations).
12. Document ownership of Burley Park prior to plan certification.

Note: The applicant has now requested a continued discussion to change the development from multi-family residential to 22 townhouses.

The Subdivision Committee Recommended: Postponement. There were concerns related to open space and off-street parking.

* - Denotes date by which Commission must either approve or disapprove plan.

Should this plan be approved, the previous 12 conditions should be considered, plus the following additional requirements:

13. Provided the Planning Commission makes a finding regarding the use of an access easement.
14. Provided the Board of Adjustment grants a variance to parking maximum, open space and the required project exterior yard.
15. Clarify overall open space in site statistics.
16. Addition of the number of bedrooms to the site statistics.
17. Revise off-street parking statistics to indicate 1.5 spaces per unit are required.
18. Review by Technical Committee prior to plan certification.
19. Discuss note #18.

Development Plan Presentation – Mr. Emmons directed the Commission's attention to a rendered copy of the Development Plan for Riddle Plaza, Lot 1 & 4, which is located at 301 and 313 Burley Avenue. He said that the subject properties are located between the intersections of Red Mile Road and Virginia Avenue and Waller Avenue and Mason Headley Road, just off of South Broadway.

Mr. Emmons said that the subject site is approximately 1.5 acres in size and is located in a High Density Apartment (R-4) zone. The Planning Commission previously approved a development plan for this site that proposed a single apartment building with 24 dwelling units, associated parking, a basketball court and a detention basin. That plan was not certified.

Mr. Emmons then said that the applicant is now requesting a continued discussion of this plan in order to change this development from multi-family residential to a townhouse Group Residential Project. He noted that there will be 22 townhouse units with associated off-street parking. The storm water management would be handled with underground vault detention.

Mr. Emmons said that this new plan was reviewed by the Subdivision Committee, who recommended postponement due to concerns related to open space and off-street parking. Since that time, the staff had met with the applicant and a revised plan was submitted addressing many of the Committee's concerns. He said that with the original submittal, the building line was being proposed 20 feet from Burley Avenue, and with this property being inside the Infill and Redevelopment boundaries, as well as being developed as townhouses, the regulations now call for the building line to be between 5 to 15 feet from the street. The applicant is proposing that 5 townhouses will front on Burley Avenue and the remaining townhouses will face inward toward the parking area. He said that the applicant has revised the building line along Burley Avenue to meet the requirements, noting that the townhouses will not be any further than 10 feet from the street.

Mr. Emmons directed the Commission's attention to 301 Burley Avenue, and noted this lot is currently the neighborhood park and the property owner is the Lexington-Fayette Urban County Government. He said that, on the original plan approved last year a condition was added that required the applicant to document the ownership of Burley Park prior to plan certification (condition #12). He then said that from the beginning the applicant has proposed to relocate the park closer to South Broadway; however, due to concerns made by neighborhood representatives the new park will now be located directly across from the subject properties, at the corner of Burley Avenue and Edward Avenue. Mr. Emmons said that neighbors also had concerns with the original proposal for the apartment complex, although that was not expressed to the Commission last year. They felt that the 3 story apartment complex would be out of character with the surrounding areas, which is why the layout of the development had changed.

Mr. Emmons noted that the original conditions listed on today's agenda are still valid for this project, and the applicant will need to document their compliance with Article 15-7 of the Zoning Ordinance (condition #11). He then said that Article 15-7 list certain design criteria for new development to meet to be more compatible with older neighborhoods. He noted that there are also requirements for group residential projects inside the Infill and Redevelopment Area and these include parking lot lighting to be at a lower level to keep in line with older neighborhoods as well.

Mr. Emmons explained the remaining new conditions listed on today's agenda. He said that the Planning Commission must make a finding regarding the use of an access easement (condition #14). He directed the Commission's attention to the previously distributed staff report and noted that there are 4 findings that are appropriate for the use of an access easement. Mr. Emmons gave a brief explanation for the following findings:

1. The townhouse group residential project has frontage and access on Burley Avenue, but will not provide direct frontage to each individual townhouse unit within the project.
2. Access points to Burley Avenue will decrease from an existing three access points to two access points with the development of this group residential project.
3. It is unnecessary to provide a new public or private street to serve the frontage and access needs of this townhouse group residential project. As proposed, individual townhouse units will be provided frontage along the parking lot/access easements in front of the units.

4. The property is governed by a development plan that allows the Planning Commission to evaluate the adequacy of the proposed access easement to serve the proposed development of the subject property.

Mr. Emmons said that the applicant had recently submitted an application to the Board of Adjustment for multiple variance requests, including the parking maximum, the minimum open space requirement and the required project exterior yard. He then said that the overall project requires 20 percent open space; and, at the Subdivision Committee meeting, the only statistics the staff was aware of was for each individual townhouse lot showing 10 percent open space. He said that with the revised submittal, the applicant is now providing 18 percent for the overall open space. This would mean the applicant needs the Board of Adjustment to grant a variance for the 2 percent difference, and should the BOA deny their request, the development plan would need to be modified to meet the Zoning Ordinance.

Mr. Emmons said that since this proposal is inside the Infill and Redevelopment Area, this development is required to have 1.5 parking spaces per unit or a minimum of 33 and a maximum 50 parking space. He then said that the applicant is proposing 60 parking spaces; therefore, they would need the BOA to grant a variance for the additional 10 parking spaces. He noted that the applicant had met with the neighborhood representative, and the neighbors made a request to keep their parking on-site and not place overflow cars on the street.

Mr. Emmons then said that the infill and redevelopment regulations call for the building line to be between 5 to 15 feet from the street. However, the side and rear setback are required to be 20 feet from the property line. He said that the applicant will need to seek a variance from the BOA to reduce the setback to what they are proposing.

Mr. Emmons explained the remaining conditions listed on today's agenda, and noted that the applicant has clarified the overall open space in site statistics and condition #15 can be deleted. He then noted that conditions #16 and #17 are "cleanup" item; and as for condition #18, the staff felt the proposed changes to the development plan was large enough to warrant another review by the Technical Committee. He said that condition #19 is related to note #18 that is listed on the development plan. He then said that the language of note #18 allows the applicant too much flexibility in making changes to the layout of the townhouses after the plan is certified. The staff is requesting for note #18 to be deleted from the development plan (condition #19). He said that should trouble arise for the applicant, they do have the option to resubmit their plan to the Planning Commission once again.

In conclusion, Mr. Emmons noted that the Subdivision Committee recommended postponement due to concerns related to open space and off-street parking. He said that the staff had previously recommended approval, and are still recommending approval, subject to the conditions listed on today's agenda, noting condition #15 can be deleted and condition #19 be changed to read: "Delete note #18."

Commission Questions – Mr. Penn said that this request has a lot of changes since the original approval, and asked if this is for an amended development plan. Mr. Emmons said that this item involves a continued discussion. He then said that the Planning Commission had approved the original request, but that has not been certified. Mr. Penn asked if this item will be reviewed by the Technical Committee, in addition to needing the Board of Adjustment to grant multiple variances. Mr. Emmons replied affirmatively, and said that if the BOA does not grant the variances the applicant will need to change the site plan to comply with the entire Zoning Ordinance. Mr. Penn asked if the staff is comfortable with the proposed changes to the setback requirements. Mr. Emmons replied affirmatively.

Representation – Rory Kahly, EA Partners, was present, and said that they are in agreement with the staff's recommendations and requested approval. He noted that two of the variances being requested are related to Article 9 of the Zoning Ordinance. He said that the openspace, as well as the side yard setbacks meet the usual townhomes requirements.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Planning Commission Questions – The Chair asked if the Commission should take action on condition #13. Mr. Emmons said that the Commission could adopt the findings provided by the staff.

Mr. Penn noted that Mr. Berkley had abstained from this case due to a conflict of interest.

Action - A motion was made by Mr. Penn, seconded by Mr. Cravens and carried 6-0 (Beatty, Brewer, Berkley and Copeland absent) to approve DP 2011-62, subject to the previous 12 conditions, adding the following requirements:

13. Provided the Planning Commission makes a finding regarding the use of an access easement.
14. Provided the Board of Adjustment grants a variance to parking maximum, open space and the required project exterior yard.
15. Addition of the number of bedrooms to the site statistics.
16. Revise off-street parking statistics to indicate 1.5 spaces per unit are required.
17. Review by Technical Committee prior to plan certification.
18. Delete note #18.

Adopting the following findings per condition #13:

1. The townhouse group residential project has frontage and access on Burley Avenue, but will not provide direct frontage to each individual townhouse unit within the project.
2. Access points to Burley Avenue will decrease from an existing three access points to two access points with the development of this group residential project.
3. It is unnecessary to provide a new public or private street to serve the frontage and access needs of this townhouse group residential project. As proposed, individual townhouse units will be provided frontage along the parking lot/access easements in front of the units.
4. The property is governed by a development plan that allows the Planning Commission to evaluate the adequacy of the proposed access easement to serve the proposed development of the subject property.

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-0 (Beatty, Berkley, Brewer and Copeland absent) to approve the release and call of bonds as detailed in the memorandum dated March 8, 2012, from Ron St. Clair, Division of Engineering.

- V. **COMMISSION ITEMS** – The Chair asked if there is any item a Commission member would like to present. There was no response.

- VI. **STAFF ITEMS** – The Chair asked if there is any item a Staff member would like to present at this time.

- A. **HOUSE BILL 55 TRAINING OPPORTUNITY** - There will be an APA audio conference on Wednesday, March 14, 2012 from 4:00 until 5:30 in the Division of Planning Conference Room on the 7th floor of the Phoenix Building. The title of this training session is "Urban Agriculture and Food Systems Planning" and will count toward 1.5 hours of training credit.

Staff Comment – Mr. Sallee said that there is a training session available to the Commission members on Wednesday, March 14, 2012. The title of this training session is "Urban Agriculture and Food Systems Planning;" and he noted that this training session would count toward 1.5 hours of training credit.

- VII. **AUDIENCE ITEMS** – There were no such items.

VIII. **NEXT MEETING DATES**

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 15, 2012
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 22, 2012
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 28, 2012
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 29, 2012
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	April 5, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	April 5, 2012
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 12, 2012

- IX. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 5:38 PM.

Mike Owens, Chair

Lynn Roche-Phillips, Secretary